

**United States Senate**  
WASHINGTON, DC 20510

January 10, 2019

Mr. William P. Barr  
Of Counsel  
Kirkland & Ellis LLP  
655 Fifteenth Street, NW  
Washington, D.C. 20005

**HAND-DELIVERED**

Dear Mr. Barr:

In advance of the hearing next week on your nomination to be Attorney General of the United States, I write to notify you of several lines of questioning which I expect, given this advance notice, you will be prepared to answer:

**Pre-nomination Contacts with the Trump Administration about the Special Counsel Investigation**

1. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Trump White House? With whom? When? Who said what?
2. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Department of Justice? With whom? When? Who said what?
3. On June 8, 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel titled "Mueller's 'Obstruction' Theory," in which you wrote that Special Counsel Mueller's "obstruction theory is fatally misconceived." You also stated your memo was unsolicited.
  - a. Why did you submit an unsolicited memo about a pending investigation to the Department of Justice?
  - b. Did you have any communications related to the memo before June 8 with any person at the Trump White House, President Trump's legal team, the Department of Justice, or Republican House committee members or staff?
  - c. Did you have any communications related to the memo after June 8 with any person at the Trump White House, President Trump's legal team, the Department of Justice, or Republican House committee members or staff?
  - d. Did you discuss the memo before June 8 with any person currently or formerly associated with the Federalist Society?
  - e. Did you discuss the memo before June 8 with any other person?

- f. Did you share any draft of your memo with any person prior to sending it to the Department of Justice?
- g. Your memo contains many legal citations. Did you receive assistance from anyone in writing or researching your memo?
- h. Who paid you for the time it took you to write and research this memo?
- i. How was the memo transmitted to the Department of Justice? Were there emails or other cover documents associated with its transmission? If so, will you commit to producing them to the Committee?
- j. Discussing your memo, Rod Rosenstein was quoted in a December 20, 2018, *Politico* article as saying: "I didn't share any confidential information with Mr. Barr. He never requested that we provide any non-public information to him, and that memo had no impact on our investigation." Did you request that DOJ provide you any information to you about the Mueller investigation? If so, what did you request, from whom did you request it, and what was provided?

### **Protecting the Independence of the Special Counsel Investigation**

In October 1973, during the Watergate scandal, President Nixon ordered the firing of independent special prosecutor Archibald Cox, who was investigating Nixon's role in the scandal. Attorney General Elliot Richardson and Deputy Attorney General William French Smith refused to fire Cox and resigned in protest, but the next in command, Solicitor General Robert Bork, was willing to carry out the firing. In the aftermath of what became known as the Saturday Night Massacre, Acting Attorney General Bork agreed to enter into a written delegation agreement to ensure the independence of Cox's successor, Leon Jaworski. The agreement stated, among other things:

1. "[T]he Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part ...."
2. "The Special Prosecutor shall have full authority ... for ... initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction ... including any appeals .... In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability falling within the jurisdiction of the Department of Justice .... The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions."
3. "The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require."
4. "The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress."

The Bork Order is available at 38 Fed. Reg. 30738, Order 551-73 (Nov. 7, 1973), and is attached for your reference. While Special Counsel Mueller was appointed under different legal authority

than Mr. Jaworski, these provisions in the Bork Order are not inconsistent with current DOJ regulations and could be adopted to supplement those requirements. Your agreement to follow in the footsteps of Robert Bork would provide significant assurances to those who fear your appointment is a prelude to another Saturday Night Massacre. I request that you review the Bork Order in its entirety so that we may have a discussion about whether you have any objection to adopting the terms I mentioned above for the Special Counsel investigation.

### **Commitments Concerning DOJ Independence and Communications with the White House**

As you know, there is a long history of protecting law enforcement efforts from both political interference and the appearance thereof. For most of the last several decades, clear written policies governing—and limiting—contacts between agencies with law enforcement functions and the White House have played an important role in preserving the integrity of law enforcement efforts. Following precedent set by the Clinton administration in cooperation with Senate Judiciary Chairman Hatch, Attorney General Holder established communications protocols that, I have been advised by DOJ, remain in effect today. On January 27, 2017, White House Counsel Don McGahn issued a memorandum establishing the Trump Administration's guidelines for communications between the White House (including all components of the Executive Office of the President) and the Department of Justice. I am attaching copies of both of those policies here. I request that you review them before your hearing so you are able to commit to following them if confirmed.

### **DOJ Ethics and Dark Money**

On December 4, 2018, I joined several of my Judiciary Committee colleagues in sending a letter to DOJ ethics officials requesting information on whether their review of Acting Attorney General Whitaker's potential conflicts of interest would include real parties behind the funding of his prior employer, the Foundation for Accountability and Civic Trust (FACT). Since 2015, Mr. Whitaker has received more than \$1.2 million in compensation from FACT, a 501(c)(3) organization promoting "accountability" from public officials. Between 2014 and 2016, FACT received virtually all of its funding—approximately \$2.45 million—from a donor-advised fund called DonorsTrust. DonorsTrust has been described as "the dark-money ATM for the right," which "allows wealthy contributors who want to donate millions to the most important causes on the right to do so anonymously, essentially scrubbing the identity of those underwriting conservative and libertarian organizations." During and after his tenure at FACT, the organization has filed at least fourteen complaints and requests for investigations with the Department of Justice, the Internal Revenue Service, and the Federal Election Commission against Secretary of State Hillary Clinton, various Democratic members of Congress, Democratic Party leaders, and Democratic candidates.

It seems self-evident that in order to fully assess Mr. Whitaker's conflicts of interest, DOJ needs to know the identities of donors that funded FACT's partisan activities and Whitaker's salary through DonorsTrust. Unfortunately, we have not yet received a response to our letter, which I attach here for your review. I am not interested in your views on Mr. Whitaker specifically, but I would like you to be prepared to discuss how DOJ recusal and conflict of interest policies can be effective if nominees like you, or appointees like Mr. Whitaker, fail to disclose anonymous

funding or payments they have received, or political contributions or solicitations they have made, as part of their financial disclosures in the ethics review process. I will also ask you to disclose in the course of your DOJ ethics review any such undisclosed or anonymous payments or contributions you have received.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheldon Whitehouse", written over a horizontal line.

Sheldon Whitehouse  
United States Senator



or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., January 3, 1974.

This amendment is made under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

Issued at Kansas City, Missouri, on October 16, 1973.

A. I. COULTER,  
Director, Central Region.

In § 71.181 (38 FR 435), the following transition area is amended to read:

SPENCER, IOWA

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Spencer, Iowa Municipal Airport (latitude 43°09'45" N., longitude 95°11'30" W.); and within three miles each side of the Spencer VOR 320° radial, extending from the 5-mile radius zone to 8 miles northwest of the VOR; within 3.5 miles each side of the Spencer VOR 129° radial, extending from the 5-mile radius zone to 15 miles southeast of the VOR; and that airspace extending upward from 1,200 feet above the surface within 4.5 miles northeast and 9.5 miles southwest of the Spencer VOR 320° radial, extending from 6.5 miles southeast of the VOR to 18.5 miles northwest of the VOR; and within 5 miles northeast and 9.5 miles southwest of the Spencer VOR 129° radial, extending from 6.5 miles northwest of the VOR to 22.5 miles southeast of the VOR.

[FR Doc.73-23600 Filed 11-6-73;8:45 am]

[Airspace Docket No. 73-CE-22]

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

##### Transition Area; Alteration

On Page 23338 of the FEDERAL REGISTER dated August 29, 1973, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of the Federal Aviation Regulations so as to alter the transition area at St. Louis, Missouri.

Interested persons were given 30 days to submit written comments, suggestions or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., January 3, 1974.

This amendment is made under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Missouri, on October 16, 1973.

JOHN R. WALLS,  
Acting Director, Central Region.

In § 71.181 (38 FR 435), the following transition area is amended to read:

St. Louis, Missouri

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Lambert St. Louis International Airport (latitude 38°44'50" N., longitude 90°21'55" W.); within 5 miles southeast and 8 miles northwest of the Lambert St. Louis International Airport runway 24 ILS localizer northeast course, extending from the runway 24 OM; within 5 miles southwest and 9 miles northeast of the Lambert St. Louis International Airport runway 12R ILS localizer northwest course; extending from the runway 12R OM to 12 miles northwest of the OM; within a 7-mile radius of St. Charles Smartt Airport, St. Charles, Missouri (latitude 38°56'00" N., longitude 90°26'00" W.); within an 8-mile radius of Civic Memorial Airport, Alton, Illinois (latitude 38°53'30" N., longitude 90°03'00" W.); and that airspace extending upward from 1,200 feet above the surface within a 33-mile radius of St. Louis International Airport; within 6 miles southwest and 9 miles northeast of the St. Louis VORTAC 328° radial, extending from the 33-mile radius area to 36 miles northwest of the VORTAC; within 5 miles northwest and 8 miles southeast of the Maryland Heights VORTAC 243° radial, extending from the 33-mile radius area to 19 miles southwest of the VORTAC; within the area bounded on the west and northwest by the east and southeast edge of V-14S, on the northeast by the 33-mile radius area, on the southeast by the northwest edge of V-238° and on the south by the north boundary of V-88; within a 40-mile radius of Scott AFB (latitude 38°32'30" N., longitude 89°51'05" W.); excluding the portion overlying the State of Illinois; that airspace extending upward from 2,500 feet MSL within the area bounded on the northeast by the southwest edge of V-335, on the east by the Missouri-Illinois boundary, on the south by the north edge of V-190 and on the west by the east edge of V-9; and that airspace extending upward from 4,500 feet MSL within the area bounded on the north by the south edge of V-88, on the northeast by the southwest edge of V-9W, on the south by the north edge of V-72, on the west by a line 5 miles west of and parallel to the St. Louis VORTAC 200° radial, and on the northwest by the southeast edge of V-238; within the area bounded on the north by the south edge of V-12, on the southeast by the northwest edge of V-14N, on the southwest by the northeast edge of V-175, and on the northwest by a line 5 miles southeast of and parallel to the Jefferson City, Missouri VOR 041° radial, and within the area bounded on the northeast by the southwest edge of V-52 and the Missouri-Illinois boundary, on the south by the north edge of V-4N, and on the northwest by the southeast edge of V-63.

[FR Doc.73-23606 Filed 11-6-73;8:45 am]

#### Title 28—Judicial Administration CHAPTER I—DEPARTMENT OF JUSTICE

[Order 551-73]

#### PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

##### Establishing the Office of Watergate Special Prosecution Force

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be

headed by a Director. Accordingly, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1(a) which lists the organization units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of Criminal Justice."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

##### Subpart G-1—Office of Watergate Special Prosecution Force

Sec.  
0.37 General functions.  
0.38 Specific functions.

AUTHORITY: 28 U.S.C. 509, 510, and 5 U.S.C. 301.

##### Subpart G-1—Office of Watergate Special Prosecution Force

##### § 0.37 General functions.

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix below which is incorporated and made a part hereof.

##### § 0.38 Specific functions.

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities.

Dated: November 2, 1973.

ROBERT H. BORK,  
Acting Attorney General.

##### APPENDIX—DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the



Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

Conducting proceedings before grand juries and any other investigations he deems necessary;

Reviewing all documentary evidence available from any source, as to which he shall have full access;

Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action.

#### STAFF AND RESOURCE SUPPORT

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United

States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. *Designation and responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

*Continued responsibilities of Assistant Attorney General, Criminal Division.* Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

*Applicable departmental policies.* Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

*Public reports.* The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

*Duration of assignment.* The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

[FR Doc.73-23693 Filed 11-6-73;8:45 am]

### Title 32—National Defense CHAPTER VII—DEPARTMENT OF THE AIR FORCE SUBCHAPTER G—BOARDS

#### PART 865—PERSONNEL REVIEW BOARDS SUBPART A—AIR FORCE BOARD OF CORRECTION OF MILITARY RECORDS

This amendment is added to show the delegation of authority to the Air Force Board for the Correction of Military Records to correct certain military records.

Subpart A, Part 865, Subchapter G of Chapter VII of Title 32 of the Code of Federal Regulations is amended by adding a new paragraph (a) (5) to § 865.12, to read as follows:

#### § 865.12 Action by the Board.

(a) . . .

(5) *Delegation of authority to correct certain military records.*

(i) The Air Force Board for the Correction of Military Records is authorized to take final action on behalf of the Secretary of the Air Force, under 10 U.S.C. 1552, in approving the correction of military records, provided such action: (a) Has been recommended by the Air Staff; (b) is agreed to by the Board; and (c) falls into one of the following categories:

(1) Restoration of leave unduly charged to applicants.

(2) Promotion of applicants retroactively, who would have been promoted during regular promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(3) Promotion of applicants to grades held immediately prior to reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(4) Awards of basic allowance for subsistence to applicants entitled thereto.

(5) Authorizing participation under the Retired Serviceman's Family Protection Plans and the Survivors Benefits Plan where failure to elect to participate was through no fault of the applicants.

(ii) The Executive Secretary of the Board, after assuring compliance with the above conditions, will announce the final action on applications processed under this subdivision.

(10 U.S.C. 1552)

By order of the Secretary of the Air Force.

STANLEY L. ROBERTS,  
Colonel, USAF, Chief, Legislative Division, Office of the Judge Advocate General.

[FR Doc.73-23675 Filed 11-6-73; 8:45 am]

### Title 32A—National Defense, Appendix CHAPTER XIII—ENERGY POLICY OFFICE EPO REG. 1—MANDATORY ALLOCATION PROGRAM FOR MIDDLE DISTILLATE FUELS

#### Removal of Limitation Imposed by Term "Customs Territory of the United States"

EPO Reg. 1 for the Mandatory Allocation Program for Middle Distillate Fuels was published in the FEDERAL REGISTER of October 16, 1973 (38 FR 28660) which became effective November 1, 1973. The purpose of this amendment is to amend the definition of the term "State office" and the reference in the section entitled "Coverage of Program" in those regulations to remove the limitation imposed by the term "customs territory of the United States." Under the meaning assigned that phrase by general headnote 2 to the Tariff Schedules of the United States (19 U.S.C. 1202), the Virgin Islands are excluded from coverage under the Program.

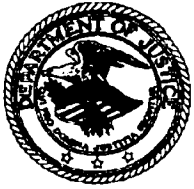
Because of the emergency nature of this regulation due to the possibility of present and prospective shortages of middle distillates, it has been determined that this amendment shall become effective on November 7, 1973.

EPO Regulation 1 (38 FR 28660) is amended as follows:

1. In Section 2 *Definitions* the term "State office" is amended by deleting the phrase "within the Customs Territory" which follows the word "territories" so as to make the definition read as follows:

"State office" means, with respect to each of the 50 States, the District of Columbia,





Office of the Attorney General  
Washington, D. C. 20530

May 11, 2009

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS  
ALL UNITED STATES ATTORNEYS

FROM:

THE ATTORNEY GENERAL.

SUBJECT:

Communications with the White House and Congress

The rule of law depends upon the evenhanded administration of justice. The legal judgments of the Department of Justice must be impartial and insulated from political influence. It is imperative that the Department's investigatory and prosecutorial powers be exercised free from partisan consideration. It is a fundamental duty of every employee of the Department to ensure that these principles are upheld in all of the Department's legal endeavors.

In order to promote the rule of law, therefore, this memorandum sets out guidelines to govern all communications between representatives of the Department, on the one hand, and representatives of the White House and Congress, on the other, and procedures intended to implement those guidelines. (The "White House," for the purposes of this Memorandum, means all components within the Executive Office of the President.) These guidelines have been developed in consultation with, and have the full support of, the Counsel to the President.

1. Pending or Contemplated Criminal or Civil Investigations and Cases

The Assistant Attorneys General, the United States Attorneys, and the heads of the investigative agencies in the Department have the primary responsibility to initiate and supervise investigations and cases. These officials, like their superiors and their subordinates, must be insulated from influences that should not affect decisions in particular criminal or civil cases. As the Supreme Court said long ago with respect to United States Attorneys, so it is true of all those who exercise the Department's investigatory and prosecutorial powers: they are representatives "not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935).

a. In order to ensure the President's ability to perform his constitutional obligation to "take care that the laws be faithfully executed," the Justice Department will advise the White House concerning pending or contemplated criminal or civil investigations or cases when—but only when—it is important for the performance of the President's duties and appropriate from a law enforcement perspective.

b. Initial communications between the Department and the White House concerning pending or contemplated criminal investigations or cases will involve only the Attorney General or the Deputy Attorney General, from the side of the Department, and the Counsel to the President, the Principal Deputy Counsel to the President, the President or the Vice President, from the side of the White House. If the communications concern a pending or contemplated civil investigation or case, the Associate Attorney General may also be involved. If continuing contact between the Department and the White House on a particular matter is required, the officials who participated in the initial communication may designate subordinates from each side to carry on such contact. The designating officials must monitor subsequent contacts, and the designated subordinates must keep their superiors regularly informed of any such contacts. Communications about Justice Department personnel in reference to their handling of specific criminal or civil investigations or cases are expressly included within the requirements of this paragraph. This policy does not, however, prevent officials in the communications, public affairs, or press offices of the White House and the Department of Justice from communicating with each other to coordinate efforts.

c. In order to ensure that Congress may carry out its legitimate investigatory and oversight functions, the Department will respond as appropriate to inquiries from Congressional Committees consistent with policies, laws, regulations, or professional ethical obligations that may require confidentiality and consistent with the need to avoid publicity that may undermine a particular investigation or litigation. Outside the context of Congressional hearings or investigations, all inquiries from individual Senators and Members of Congress or their staffs concerning particular contemplated or pending criminal investigations or cases should be directed to the Attorney General or the Deputy Attorney General. In the case of particular civil investigations or cases, inquiries may also be directed to the Associate Attorney General.

d. These procedures are not intended to interfere with the normal communications between the Department and its client departments and agencies (including agencies within the Executive Office of the President when they are the Department's clients) and any meetings or communications necessary to the proper conduct of an investigation or litigation.

## 2. National Security Matters

It is critically important to have frequent and expeditious communications relating to national security matters, including counter-terrorism and counter-espionage issues. Therefore communications from (or to) the Deputy Counsel to the President for National Security Affairs, the staff of the National Security Council and the staff of the Homeland Security Council that relate to a national security matter are not subject to the limitations set out above. However, this exception for national security matters does not extend to pending adversary cases in litigation that may have national security implications. Communications related to such cases are subject to the guidelines for pending cases described above.



3. White House Requests for Legal Advice

All requests from the White House for formal legal opinions shall come from the President, the Counsel to the President, or one of the Deputy Counsels to the President, and shall be directed to the Attorney General and the Assistant Attorney General for the Office of Legal Counsel. The Assistant Attorney General for the Office of Legal Counsel shall report to the Attorney General and the Deputy Attorney General any communications that, in his or her view, constitute improper attempts to influence the Office of Legal Counsel's legal judgment.

4. Communications Involving the Solicitor General's Office.

Matters in which the Solicitor General's Office is involved often raise questions about which contact with the Office of the Counsel to the President is appropriate. Accordingly, the Attorney General and Deputy Attorney General may establish distinctive arrangements with the Office of the Counsel to govern such contacts.

5. Presidential Pardon Matters

The Office of the Pardon Attorney may communicate directly with the Counsel to the President and the Deputy Counsels to the President, concerning pardon matters. The Counsel to the President and the Deputy Counsels to the President may designate subordinates to carry on contact with the Office of the Pardon Attorney after the initial contact is made.

6. Personnel Decisions Concerning Positions in the Civil Service

All personnel decisions regarding career positions in the Department must be made without regard to the applicant's or occupant's partisan affiliation. Thus, while the Department regularly receives communications from the White House and from Senators, Members of Congress, and their staffs concerning political appointments, such communications regarding positions in the career service are not proper when they concern a job applicant's or a job holder's partisan affiliation. Efforts to influence personnel decisions concerning career positions on partisan grounds should be reported to the Deputy Attorney General.

7. Other Communications Not Relating to Pending Investigations  
or Criminal or Civil Cases

All communications between the Department and the White House or Congress that are limited to policy, legislation, budgeting, political appointments, public affairs, intergovernmental relations, or administrative matters that do not relate to a particular contemplated or pending investigation or case may be handled directly by the parties concerned. Such communications should take place with the knowledge of the Department's lead contact regarding the subject

Memorandum for Head of Department Components  
All United States Attorneys  
Subject: Communications with the White House and Congress

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under discussion. In the case of communications with Congress, the Office of the Deputy Attorney General and Office of the Assistant Attorney General for Legislative Affairs should be kept informed of all communications concerning legislation and the Office of the Associate Attorney General should be kept informed about important policy communications in its areas of responsibility.

As Attorney General Benjamin Civiletti noted in issuing a similar memorandum during the Carter Administration, these guidelines and procedures are not intended to wall off the Department from legitimate communication. We welcome criticism and advice. What these procedures are intended to do is route communications to the proper officials so they can be adequately reviewed and considered, free from either the reality or the appearance of improper influence.

Decisions to initiate investigations and enforcement actions are frequently discretionary. That discretion must be exercised to the extent humanly possible without regard to partisanship or the social, political, or interest group position of either the individuals involved in the particular cases or those who may seek to intervene against them or on their behalf.

This memorandum supersedes the memorandum issued by Attorney General Mukasey on December 19, 2007, titled *Communications with the White House*.

THE WHITE HOUSE

WASHINGTON

January 27, 2017

MEMORANDUM TO ALL WHITE HOUSE STAFF

FROM: Donald F. McGahn II – Counsel to the President

SUBJECT: Communications Restrictions with Personnel at the Department of Justice

This Memorandum outlines important rules and procedures regarding communications between the White House (including all components of the Executive Office of the President) and the Department of Justice. These rules exist to ensure both efficient execution of the Administration's policies and the highest level of integrity with respect to civil or criminal enforcement proceedings handled by DOJ. *In order to ensure that DOJ exercises its investigatory and prosecutorial functions free from the fact or appearance of improper political influence, these rules must be strictly followed.*

A. Limitations on discussing ongoing or contemplated cases or investigations

DOJ currently advises the White House about contemplated or pending investigations or enforcement actions under specific guidelines issued by the Attorney General. As a general matter, only the President, Vice President, Counsel to the President, and designees of the Counsel to the President may be involved in such communications. These individuals may designate subordinates to engage in ongoing contacts about a particular matter with counterparts at DOJ similarly designated by DOJ. Any ongoing contacts pursuant to such a designation should be handled in conjunction with a representative of the Counsel's office.

The White House often coordinates more broadly with DOJ (including its Office of Legal Counsel, Office of the Solicitor General, and Civil Division) where the government is or may be a defendant in litigation. These communications must first be cleared by the Counsel's Office.

If DOJ requests the views of the White House on any litigation, you must consult with the Counsel's Office before responding, and any response must be made in consultation with the Counsel's Office. This ensures that the White House provides a coherent response that takes account of both the Counsel's Office legal views and the President's broader policy objectives.

Communications with DOJ about individual cases or investigations should be routed through the Attorney General, Deputy Attorney General, Associate Attorney General, or Solicitor General, unless the Counsel's Office approves different procedures for the specific case at issue. In their discretion, and as appropriate for the handling of individual cases, those DOJ officials may authorize additional DOJ attorneys to discuss individual cases or investigations with members of the Counsel's Office. The President, Vice President, Counsel to the President, and Deputy Counsel to the President are the only White House individuals who may initiate a conversation with DOJ about a specific case or investigation.



These rules recognize the President's constitutional obligation to take care that the laws of the United States are faithfully executed, while ensuring maximum public confidence that those laws are administered and applied impartially in individual investigations or cases.

B. Limitations on discussing other matters

The White House may communicate with DOJ about matters of policy, legislation, budgeting, political appointments, public affairs, intergovernmental relations, administrative matters, or other matters that do not relate to a particular contemplated or pending investigation or case. You must route these communications through the offices of the Attorney General, Deputy Attorney General, or Associate Attorney General unless you have received clearance from the Counsel's office to follow different procedures.

C. Restrictions on soliciting an OLC opinion

The White House often relies upon the Office of Legal Counsel to issue formal legal opinions. Requests for such opinions must be limited to specific legal questions impacting particular matters before the Executive Branch. Such requests must be authorized by the President, the Vice President, the Counsel to the President, or a Deputy Counsel to the President. These individuals may also designate others who may engage in ongoing contacts with OLC where a request for a formal legal opinion has been authorized. If this designation extends to individuals outside the Counsel's Office, it should be in writing, and the ongoing contacts should be handled in conjunction with a member of the Counsel's office. All requests for an OLC opinion shall be directed to the Attorney General, the Assistant Attorney General for OLC, or one of their designees.

D. National Security Exceptions

Frequent communications between the White House and DOJ will be necessary on matters of national security and intelligence, including counter-terrorism and counter-espionage issues. Accordingly, communications that relate to urgent and ongoing national-security matters may be handled by specifically designated individuals. This exception does not relate to a particular contemplated or pending investigation or case absent written authorization from the Counsel to the President. In emergencies for which application of these procedures would pose a serious threat to national security, White House personnel may receive from DOJ communications necessary to protect against such threats. The Counsel to the President shall be informed about any such contacts as promptly as is practicable.

E. Consultation

If you have any questions or do not believe that a potential contact with DOJ fits neatly into any of these categories, you must consult the Counsel's office for guidance. Moreover, unless you are certain that the particular contact is permissible, you must consult with the Counsel's Office before proceeding.

# United States Senate

WASHINGTON, DC 20510

December 4, 2018

Mr. Lee Lofthus  
Assistant Attorney General for Administration and Designated Agency Ethics Official  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Ms. Stacy Ludwig  
Director  
Professional Responsibility Advisory Office  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Lofthus and Ms. Ludwig:

We write to request an update on, and additional information about, how the Department of Justice (DOJ) is assessing potential conflicts of interest—financial, professional, and political—of Acting Attorney General Matthew Whitaker and Assistant Attorney General Brian Benczkowski. For background, some of these are renewed requests because DOJ has either failed to respond or has provided incomplete responses to prior requests from Congress. We appreciate the efforts your offices are making to ensure these individuals have been properly vetted. To maintain the public's trust in an impartial DOJ, we urge you to provide prompt, complete, and public responses to the issues we raise below.

## **Matthew Whitaker**

Matthew Whitaker was appointed Acting Attorney General on November 7, 2018. Mr. Whitaker had previously been appointed to the position of Chief of Staff and Senior Counselor on October 4, 2017. On November 11, 2018, Democratic leaders from the House and Senate wrote to Mr. Lofthus asking, among other things, whether any “ethics officials at the Justice Department ... have advised Mr. Whitaker to recuse from supervision of the Special Counsel investigation, ... the basis for that recommendation, [and] all ethics guidance the Department has provided to Mr. Whitaker to date.”

Compliance with the Ethics in Government Act would have required Mr. Whitaker to file financial disclosures with the Department's designated agency ethics officials on two separate occasions: when he joined the Department in 2017 and again by May 15, 2018. The Department is legally required to have these disclosures certified and made available to public requestors within 30 days of their filing.<sup>1</sup> When the Department finally released Mr. Whitaker's financial disclosures on November 20, 2018, it was revealed that DOJ did not certify these disclosures until after Mr. Whitaker had had the opportunity to revise them on five separate occasions

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<sup>1</sup> 5 U.S.C. app. § 105(b)(1).



(November 7, 8, 16, 19 and 20 of 2018)—nearly six months after the deadline for submission, and only after he had been named as Acting Attorney General.<sup>2</sup>

These delays only became apparent after Mr. Whitaker was appointed Acting Attorney General outside the line of succession established under 28 U.S.C. § 508. Had that law been followed, Deputy Attorney General Rod Rosenstein, who has been confirmed by the Senate and whose financial disclosures and confidential background information have already been fully vetted by it, would now be serving at the nation's chief law enforcement officer. Instead, that role, which is among the most sensitive and consequential in the federal government, is being filled by someone about whom the Senate, DOJ, and the general public know very little. To date, the Department has not produced prior versions of Mr. Whitaker's financial disclosures, any ethics agreements he entered into with the Department, or any other ethics-related counseling he has received—all of which have been requested and should be made available.

Information we have learned about Mr. Whitaker from DOJ and through media reports demonstrates why your offices must complete a prompt and thorough assessment of Mr. Whitaker's financial, professional, and political conflicts of interest, and make public that assessment, as well as any related recusals, waivers, and authorizations. Former Attorney General Alberto Gonzales has argued this is appropriate for Mr. Whitaker's potential involvement overseeing Special Counsel Robert Mueller's investigation, making the sensible observation that Mr. Whitaker's is "not a normal appointment" and that "public assurances ... might ease concerns about the president's motives in choosing Whitaker for this important position at this particular moment."<sup>3</sup> Attorney General Gonzales's point is well taken with respect to any issue in Mr. Whitaker's background that may raise concerns under the Ethics in Government Act (5 U.S.C. app. 4 and 5 C.F.R. §§ 2635.501-503), the Hatch Act (5 U.S.C. § 1501 et seq.), DOJ rules requiring disqualification because of a prior personal or political relationship (28 C.F.R. § 45.2), and applicable bar rules and standards of professional conduct (including Model Rules of Professional Conduct R. 1.11). For example:

- Since 2015, Mr. Whitaker has received more than \$1.2 million in compensation from the Foundation for Accountability and Civic Trust (FACT), a 501(c)(3) organization promoting "accountability" from public officials.<sup>4</sup> Between 2014 and 2016, FACT received virtually all of its funding—approximately \$2.45 million—from a donor-advised fund called

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<sup>2</sup> Public Financial Disclosure Report for Matthew Whitaker, OGE Form 278e (Nov. 20, 2018). This delay echoes concerns with DOJ's ethics review process that have been raised previously, including as recently as in 2017, when the Office of Government Ethics' review of DOJ's ethics program found that, among other deficiencies, only 45 percent of public financial disclosure reports were being certified in a timely manner and specifically recommended that this be corrected. See Office of Government Ethics, *Ethics Program Review: Department of Justice* (Sept. 2017).

<sup>3</sup> Alberto Gonzales, *Three Steps Whitaker Could Take to Ease Concerns About His Impartiality*, WASHINGTON POST, Nov. 27, 2018, available at [https://www.washingtonpost.com/opinions/three-steps-whitaker-could-take-to-ease-concerns-about-his-impartiality/2018/11/27/dfcb375c-f282-11e8-aeaa-b85fd4449f5\\_story.html?utm\\_term=.d8b8b4de09cb](https://www.washingtonpost.com/opinions/three-steps-whitaker-could-take-to-ease-concerns-about-his-impartiality/2018/11/27/dfcb375c-f282-11e8-aeaa-b85fd4449f5_story.html?utm_term=.d8b8b4de09cb).

<sup>4</sup> Robert O'Harrow Jr., Shawn Boburg, Aaron C. Davis, *Conservative Nonprofit with Obscure Roots and Undisclosed Funders Paid Matthew Whitaker \$1.2 Million*, WASHINGTON POST, Nov. 20, 2018, available at [https://www.washingtonpost.com/investigations/conservative-nonprofit-with-obscure-roots-and-undisclosed-funders-paid-matthew-whitaker-12-million/2018/11/20/25ff987e-e9db-11e8-bd89-eeef3b178206\\_story.html?noredirect=on&utm\\_term=.0fb38dae103d](https://www.washingtonpost.com/investigations/conservative-nonprofit-with-obscure-roots-and-undisclosed-funders-paid-matthew-whitaker-12-million/2018/11/20/25ff987e-e9db-11e8-bd89-eeef3b178206_story.html?noredirect=on&utm_term=.0fb38dae103d).



DonorsTrust.<sup>5</sup> DonorsTrust has been described as “the dark-money ATM for the right,” which “allows wealthy contributors who want to donate millions to the most important causes on the right to do so anonymously, essentially scrubbing the identity of those underwriting conservative and libertarian organizations.”<sup>6</sup> Given Mr. Whitaker’s activities at FACT, discussed below, a necessary part of any conflict of interest review by your offices will be to determine the real parties that funded Mr. Whitaker’s activities. The tax laws that limit transparency about dark money in IRS filings should not be treated as impediments to obtaining necessary ethics disclosures now that Mr. Whitaker is a public official. The information is not privileged.

- Mr. Whitaker served as FACT’s executive director until joining the Justice Department in 2017. During and after his tenure at FACT, the organization has filed at least fourteen complaints and requests for investigations with the Department of Justice, the Internal Revenue Service (IRS), and the Federal Election Commission (FEC) against Secretary of State Hillary Clinton, various Democratic members of Congress, Democratic Party leaders, and Democratic candidates. (See Appendix A for the complete list.) Many of these actions could be or are related to specific matters before DOJ or FBI, and as such raise serious conflict of interest and professional responsibility concerns.
- From 2015 to 2017, FACT paid America Rising LLC at least \$500,000 for research.<sup>7</sup> America Rising describes itself as “an opposition research and communications firm whose mission is to help its clients defeat Democrats.”<sup>8</sup> FACT also paid \$500,000 to Creative Response Concepts, a conservative public relations consulting firm. Creative Response Concepts is perhaps best known for orchestrating the “swift boat” ads against Democratic presidential nominee John Kerry in 2004.<sup>9</sup> Mr. Whitaker’s relationship with these political attack organizations is damaging enough to DOJ’s reputation. It also casts serious doubt in the mind of any reasonable person as to his fitness to be impartial overseeing any Criminal Division or Civil Rights Division investigations or prosecutions into voter fraud or suppression.<sup>10</sup>
- FACT’s record of attacking Democratic politicians, its close ties with a American Rising, and its funding relationship with DonorsTrust all suggest FACT may have been involved in

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<sup>5</sup> Sharon Kelly, *Dark Money Paid New Trump Attorney General Mathew Whitaker’s Salary for 3 Years*, DESMOGBLOG, Nov. 7, 2018, available at <https://www.desmogblog.com/2018/11/07/dark-money-donors-trust-trump-attorney-general-matthew-whitaker-jeff-sessions>.

<sup>6</sup> Andy Kroll, *Exposed: The Dark-Money ATM of the Conservative movement*, MOTHER JONES, Feb. 5, 2013, available at <https://www.motherjones.com/politics/2013/02/donors-trust-donor-capital-fund-dark-money-koch-bradley-devos/>.

<sup>7</sup> Robert O’Harrow Jr., *supra* note 4.

<sup>8</sup> *About Us*, America Rising Corporation, <https://americarisingcorp.com/about-us/>.

<sup>9</sup> Justin Elliot, *Notorious PR Firm That Reps Swift Boaters, Creationists, PhRMA Now Helping Fired IG*, TPM, Nov. 20, 2009, available at <https://talkingpointsmemo.com/muckraker/notorious-pr-firm-that-reps-swift-boaters-creationists-phrma-now-helping-fired-ig>.

<sup>10</sup> See, e.g., America Rising, NTK Network: FLASHBACK: Schumer Calls On Republicans To End ‘Futile’ Recount Efforts In 2006 (Nov. 14, 2018), available at <https://americarisingpac.org/ntk-network-flashback-schumer-calls-on-republicans-to-end-futile-recount-efforts-in-2006/>; America Rising, More Evidence of Dems Involvement in Election Form Changes (Nov. 14, 2018), available at <https://americarisingpac.org/more-evidence-of-dems-involvement-in-election-form-changes/>.



partisan political activities that violate tax code rules on 501(c)(3) organizations.<sup>11</sup> This casts doubt on Mr. Whitaker's fitness to impartially oversee certain activities of DOJ's Tax Division.

- During Mr. Whitaker's tenure at FACT, Neil Corkery served on its board of directors. Until 2014, Mr. Corkery also served as the treasurer of the Judicial Crisis Network, a 501(c)(4) organization, and the Judicial Education Project, a 501(c)(3), which together have spent millions of dollars to prevent Chief Judge Merrick Garland from receiving a hearing on his nomination to the Supreme Court and on political campaigns in support of the nominations of Neil Gorsuch and Brett Kavanaugh.<sup>12</sup> Mr. Whitaker's relationship with Mr. Corkery is plainly relevant to determining whether Mr. Whitaker has a conflict of interest, or can be viewed as impartial in overseeing any of DOJ's work vetting and preparing President Trump's nominees to the federal bench.

Pursuant to Ethics in Government Act regulations (5 C.F.R. §§ 2635.501-503), an employee should seek advice from an ethics official before participating in any matter in which the employee's impartiality could be questioned, and if a conflict exists, a determination must be made as to whether the interest of the government in the employee's participation outweighs the concern a reasonable person may question the Department's integrity. This determination must be made in writing. We hope that Mr. Whitaker raised the above facts with ethics officials at DOJ and that DOJ has made determinations regarding conflicts of interest and impartiality when Mr. Whitaker was appointed to his former position. If it did not, there should be no greater priority in your offices than to conduct a thorough assessment that at a minimum addresses the facts above.

### **Brian Benczkowski**

On July 24, 2018, fourteen Senators requested information "concerning Mr. Benczkowski's ethics agreement with the Department, the scope of his recusals, any waivers he has been granted, and any other information relevant to the Department's review of Mr. Benczkowski's prior work at it relates to his compliance with the Ethics in Government Act, associated regulations, Department policy, and the Trump Ethics Pledge, Executive Order 13770."<sup>13</sup> On October 18, 2018, Assistant Attorney General Stephen Boyd provided a cover letter and three documents: a February 26, 2018, review of Mr. Benczkowski's financial disclosure report (which had already been made available to the Senate Judiciary Committee), a Certification of Ethics Agreement Compliance (which is available publicly through the Office of Government

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<sup>11</sup> 26 U.S.C. § 501(c)(3); see Ray Madoff, *We don't know who was paying Matthew Whitaker, and that's a problem*, WASHINGTON POST, Nov. 23, 2018, available at [https://www.washingtonpost.com/opinions/we-dont-know-who-was-paying-matthew-whitaker-and-thats-a-problem/2018/11/23/5a2b5dc2-ef53-11e8-9236-bb94154151d2\\_story.html?utm\\_term=.522af065c887](https://www.washingtonpost.com/opinions/we-dont-know-who-was-paying-matthew-whitaker-and-thats-a-problem/2018/11/23/5a2b5dc2-ef53-11e8-9236-bb94154151d2_story.html?utm_term=.522af065c887).

<sup>12</sup> Anna Masoglia, *Kavanaugh Confirmation Battle Further Mystifies 'Dark Money' Spending*, OPENSECRETS, Sept. 27, 2018, <https://www.opensecrets.org/news/2018/09/kavanaugh-confirmation-dark-money/>.

<sup>13</sup> Press Release, Office of Senator Sheldon Whitehouse, Senators Press DOJ on New Criminal Division Head's Ethics Agreements, Recusals (July 24, 2018), available at <https://www.whitehouse.senate.gov/news/release/senators-press-doj-on-new-criminal-division-heads-ethics-agreements-recusals>.



Ethics (OGE) website), and a signed copy of the Trump Ethics Pledge (also available through OGE).

In response to that letter, staff from Senator Whitehouse's office requested two additional pieces of information:

- A post-confirmation recusal statement documenting Mr. Benczkowski's specific recusal obligations pursuant to 5 C.F.R. § 2634.804. Such statements typically list and describe "the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal, and a list of the positions of those agency employees involved in the enforcement." 5 C.F.R. § 2634.804(b)(1). These statements are regularly disclosed by other federal agencies upon request.
- Further information about the notation in section 7(c) of the Certification of Ethics Agreement Compliance, which indicates Mr. Benczkowski received a 502(d) authorization for a "former client" on August 21, 2018. Section 502(d) authorizations are regularly made public by the White House,<sup>14</sup> though none have been made public since July 16, 2018.

After repeated requests at a staff level, today DOJ provided heavily redacted information about Mr. Benczkowski's 502(d) authorization, and no further information about his recusals.

As was noted in the Senators' July 24 correspondence with DOJ, the information we have requested does not address speculative or hypothetical concerns. In private practice, Mr. Benczkowski represented Alfa Bank, a member of the Alfa Group Consortium. Three individuals with ownership interests in Alfa Group Consortium—Mikhail Fridman, Pyotr Aven, and German Khan—have been identified to Congress by the United States Department of Treasury as among "senior foreign officials and oligarchs in the Russian Federation, as determined by their closeness to the Russian regime and their net worth."<sup>15</sup> A son-in-law of Mr. Khan, Alex Van der Zwaan, pleaded guilty to lying to federal investigators.<sup>16</sup> Mr. Benczkowski's recusal from the Special Counsel investigation does not address his involvement in any of these matters.

The impartiality and credibility of DOJ's leadership are of national importance. By conducting thorough and transparent reviews of Mr. Whitaker and Mr. Benczkowski, your offices play a critical role in ensuring compliance with the high standards DOJ officials historically have sought to maintain. To that end, we request the following:

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<sup>14</sup> See, e.g., White House, Waiver Certifications for WHO/OVP Employees (July 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/07/Waiver-Chart-7-16-18.pdf>.

<sup>15</sup> Report to Congress Pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act of 2017 Regarding Senior Foreign Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities, January 29, 2018.

<sup>16</sup> The Special Counsel referenced Mr. Khan in his sentencing memorandum for Mr. Van der Zwaan: "Van der Zwaan is a person of ample financial means—both personally and through his father-in-law, a prominent Russian oligarch, who has paid substantial sums to the defendant and his wife. He can pay any fine imposed." Government's Sentencing Memorandum, Crim. No. 18-31 (D.D.C) filed Mar. 27, 2018.



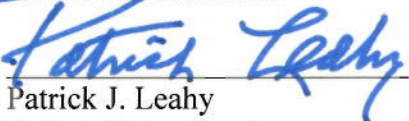
- Prompt disclosure of all prior versions of Mr. Whitaker's financial disclosures, any ethics agreements he entered into with the Department, and any other ethics-related counseling he has received, including waivers and authorizations.
- Prompt disclosure of all written ethics instruments governing Mr. Whitaker during his tenure as Chief of Staff and Senior Counselor to the Attorney General.
- Prompt disclosure of the additional information about Mr. Benczkowski's conflicts of interest described above.
- Assurances that the issues raised in this letter about Mr. Whitaker's background will be fully examined by career ethics officials.
- A commitment that all determinations about Mr. Whitaker's conflicts of interest, including any waivers or authorizations he receives, will be made public.

We respectfully request a response to this letter not later than December 11, 2018.

Sincerely,



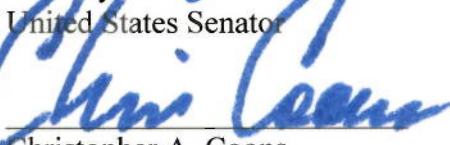
Sheldon Whitehouse  
United States Senator



Patrick J. Leahy  
United States Senator



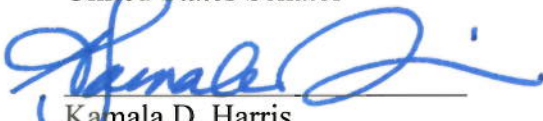
Ron Wyden  
United States Senator



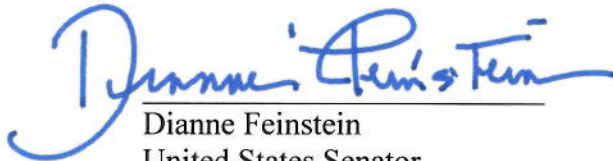
Christopher A. Coons  
United States Senator



Mazie Hirono  
United States Senator



Kamala D. Harris  
United States Senator



Dianne Feinstein  
United States Senator



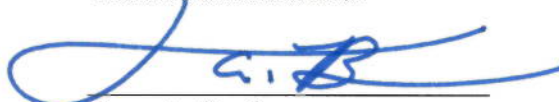
Richard J. Durbin  
United States Senator



Amy Klobuchar  
United States Senator



Richard Blumenthal  
United States Senator



Cory A. Booker  
United States Senator

cc: The Honorable Charles E. Grassley  
The Honorable Jerrold Nadler  
Assistant Attorney General Stephen E. Boyd

## **Appendix A**

- In February 2015, Mr. Whitaker, on behalf of FACT, filed a complaint with the FEC alleging a Democratic data firm made illegal contributions to the Democratic Party and various democratic committees.<sup>17</sup>
- In March 2015, Mr. Whitaker, on behalf of FACT, wrote a letter to Attorney General Holder requesting the Attorney General's office "initiate an action to recover all of Secretary Clinton's email correspondence from her private account during the time she served as Secretary of State."<sup>18</sup>
- In April 2015, Mr. Whitaker, on behalf of FACT, wrote to Attorney General Holder requesting that he initiate an investigation into Sidney Blumenthal for failing to register under the Foreign Agents Registration Act.<sup>19</sup>
- In April 2015, Mr. Whitaker, on behalf of FACT, filed a complaint with the FEC against Secretary of State Clinton, alleging that she was conducting campaign activities before officially announcing her candidacy.<sup>20</sup> FACT filed a supplemental complaint in June 2015.<sup>21</sup>
- In May 2015, Mr. Whitaker, on behalf of FACT, filed complaints with the FEC against the NextGen Climate Action Committee and the Correct the Record PAC, alleging illegal contributions and improper coordination.<sup>22</sup>
- In October 2015, FACT filed a complaint with the Internal Revenue Service against the Clinton Foundation for payments it made to the 2008 Clinton campaign.<sup>23</sup>

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<sup>17</sup> Press Release, FACT, New Ethics Watchdog Files Preliminary FEC Complaint on Catalist, Major Democratic Operations (Feb. 20, 2015), available at <https://www.factdc.org/single-post/2015/02/20/New-Ethics-Watchdog-Files-Preliminary-FEC-Complaint-on-Catalist-Major-Democratic-Operations>.

<sup>18</sup> Press Release, FACT, FACTDC Demands AG Holder To Pursue Secretary Clinton Emails (Mar. 4, 2015), available at <https://www.factdc.org/single-post/2015/03/04/FACTDC-Demands-AG-Holder-To-Pursue-Secretary-Clinton-Emails>.

<sup>19</sup> Press Release, FACT, FACTDC DCalls Upon AG To Investigate Sidney Blumenthal (Apr. 3, 2015), available at <https://www.factdc.org/single-post/2015/04/03/FACTDC-Calls-Upon-AG-To-Investigate-Sidney-Blumenthal>.

<sup>20</sup> Press Release, FACT, FACT Continues Efforts To Keep Clinton Campaign And Associates Accountable (Apr. 12, 2015), available at <https://www.factdc.org/single-post/2015/04/12/FACT-Continues-Efforts-To-Keep-Clinton-Campaign-And-Associates-Accountable>.

<sup>21</sup> Press Release, FACT, FACT Files Complaint With FEC Regarding Hillary Clinton (June 1, 2015), available at <https://www.factdc.org/single-post/2015/06/02/FACT-Files-Complaint-With-FEC-Regarding-Hillary-Clinton>.

<sup>22</sup> Press Release, FACT, FACTDC Urges Thorough FEC Investigation of NextGen Super PAC (May 5, 2015), available at <https://www.factdc.org/single-post/2015/05/05/FACTDC-Urges-Thorough-FEC-Investigation-of-NextGen-Super-PAC>; Press Release, FACT, FACT Files FEC Complaint Against Correct The Record PAC (May 18, 2015), available at <https://www.factdc.org/single-post/2015/05/18/FACT-Files-FEC-Complaint-Against-Correct-The-Record-PAC>.

<sup>23</sup> Press Release, FACT, FACT Files IRS Complaint on Clinton Foundation Payments to Hillary Campaign (Oct. 14, 2015), available at <https://www.factdc.org/single-post/2015/10/14/FACT-Files-IRS-Complaint-on-Clinton-Foundation-Payments-to-Hillary-Campaign>.



- In December 2015 and January 2016, Mr. Whitaker, on behalf of FACT, filed a complaint with the Office of Government ethics alleging that Secretary of State Hillary Clinton gave a private company improper access to the State Department based on her personal relationship with the company.<sup>24</sup>
- In January 2016, Mr. Whitaker called for a special counsel to investigate Secretary of State Hillary Clinton's emails.<sup>25</sup>
- In October 2016, Mr. Whitaker, on behalf of FACT, filed an FEC complaint against the Democratic Congressional Campaign Committee alleging illegal contributions to the Clinton Campaign and to other Democratic congressional candidates.<sup>26</sup>
- In April 2017, Mr. Whitaker, on behalf of FACT, wrote a letter to Democratic Congressman Joaquin Castro, calling on him to recuse himself from the U.S. House Permanent Select Committee on Intelligence Russian Active Measures investigation for comments made during a television interview.<sup>27</sup>
- In August 2017, Mr. Whitaker, on behalf of FACT, filed a complaint with the FEC alleging the Democratic National Committee solicited and accepted illegal contributions from the government of the Ukraine.<sup>28</sup>
- In April 2018, FACT filed a complaint with the Office of Government Ethics and the Office of the Inspector General of the Consumer Financial Protection Bureau (CFPB) against then-CFPB Deputy Director Leandra English, alleging Ms. English misused government funds to bring a lawsuit against President Trump and purported CFPB acting Director Mick Mulvaney.<sup>29</sup>

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<sup>24</sup> Letter from Matthew Whitaker, Executive Director, FACT, to Walter M. Schaub, Director, U.S. Office of Government Ethics (Dec. 11, 2015), available at [https://docs.wixstatic.com/ugd/65db76\\_058c199460714689b1679e22d380b6b3.pdf](https://docs.wixstatic.com/ugd/65db76_058c199460714689b1679e22d380b6b3.pdf); Letter from Matthew Whitaker, Executive Director, FACT, to Walter M. Schaub, Director, U.S. Office of Government Ethics (Jan. 8, 2016), available at [https://docs.wixstatic.com/ugd/65db76\\_6bf1f2c904d24632b505bd676cbf0884.pdf](https://docs.wixstatic.com/ugd/65db76_6bf1f2c904d24632b505bd676cbf0884.pdf).

<sup>25</sup> Press Release, FACT, Update: Clinton's Emails 'Too Damaging' to Release Demand Special Counsel (Jan. 29, 2016), available at <https://www.factdc.org/single-post/2016/1/29/Clintons-Treatment-of-Top-Secret-Emails-Demand-Special-Counsel>.

<sup>26</sup> Press Release, FACT, FACT Files Complaint Against DCCC for Illegal, Excessive Contributions to Clinton Campaign, House Candidates (Oct. 25, 2016), available at <https://www.factdc.org/single-post/2016/10/25/FACT-Filed-FEC-Complaint-Against-DCCC-for-Illegal-Excessive-Contributions-to-Clinton-Campaign-House-Candidates>.

<sup>27</sup> Letter from Matthew Whitaker, Executive Director, FACT, to Rep. Joaquin Castro (Apr. 11, 2017), available at [https://docs.wixstatic.com/ugd/65db76\\_053e2a3abee74741adf973a41ffc4d2f.pdf](https://docs.wixstatic.com/ugd/65db76_053e2a3abee74741adf973a41ffc4d2f.pdf).

<sup>28</sup> Press Release, FACT, FACT Alleges DNC Accepted Illegal Campaign Contributions from Ukrainian Government (Aug. 9, 2017), available at <https://www.factdc.org/single-post/2017/08/09/FACT-Alleges-DNC-Accepted-Illegal-Campaign-Contributions-from-Ukrainian-Government>.

<sup>29</sup> Press Release, FACT, Watchdog Calls for Probe of CFPB Official at Center of Agency Leadership Fight (Apr. 24, 2018), available at <https://www.factdc.org/single-post/2018/04/24/Watchdog-Calls-for-Probe-of-CFPB-Official-at-Center-of-Agency-Leadership-Fight>.

- In September 2018, FACT asked DOJ to investigate three outside political groups for allegedly illegally running a crowdfunding website meant to bribe Senator Susan Collins (R-Maine) over her upcoming vote on the confirmation of United States Supreme Court nominee Brett Kavanaugh.<sup>30</sup>
- During and after Mr. Whitaker's tenure at FACT, FACT is on record stating it has filed numerous complaints with the FEC and congressional ethics committees regarding various Democratic Senators, members of Congress, federal candidates, and Democratic Party officials alleging campaign finance violations.<sup>31</sup>

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<sup>30</sup> Letter from Kendra Arnold, Executive Director, FACT, to Assistant Attorney General Brian A. Benczkowski, Criminal Division, DOJ (Sept. 13, 2018), available at [https://docs.wixstatic.com/ugd/65db76\\_5fd79f9d57bd4c06a31f97f65c251228.pdf](https://docs.wixstatic.com/ugd/65db76_5fd79f9d57bd4c06a31f97f65c251228.pdf).

<sup>31</sup>E.g., Letter from Matthew Whitaker, Executive Director, FACT, to Federal Election Commission (May 31, 2016), available at [https://docs.wixstatic.com/ugd/65db76\\_309348f96edf43aeabac981cfdad2eca.pdf](https://docs.wixstatic.com/ugd/65db76_309348f96edf43aeabac981cfdad2eca.pdf); Press Release, FACT, FACT Files FEC Complaint Against Congressional Candidate Michael Eggman (July 27, 2016), available at <https://www.factdc.org/single-post/2016/07/27/FACT-Files-FEC-Complaint-Against-Congressional-Candidate-Michael-Eggman>; Press Release, FACT, FACT Files Complaint Against McCaskill After McCaskill Brags About Her Own Election Law Violation (Aug. 14, 2015), available at <https://www.factdc.org/single-post/2015/08/14/FACT-Files-Complaint-Against-McCaskill-After-McCaskill-Brags-About-Her-Own-Election-Law-Violation>; Press Release, FACT, FACT Calls for FEC Investigation into Katie McGinty's Campaign (Aug. 9, 2016), available at <https://www.factdc.org/single-post/2016/08/09/FACT-Files-FEC-Complaint-Against-Senate-Candidate-Katie-McGinty>; Letter and Complaint from Kendra Arnold, Executive Director, FACT, to Federal Election Commission (Oct. 16, 2017), available at [https://docs.wixstatic.com/ugd/65db76\\_997c51a31dcf4ade93a0ce564f696008.pdf](https://docs.wixstatic.com/ugd/65db76_997c51a31dcf4ade93a0ce564f696008.pdf); Press Release, FACT, FACT Calls for Probe of Joe Manchin (Feb. 6, 2018), available at <https://www.factdc.org/single-post/2018/02/06/FACT-Calls-for-Probe-of-Joe-Manchin>.